

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS  
KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



MICHAEL P. KEARNS  
Interim Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

APR 13 2009

DATE: APRIL 13, 2009  
DOCKET NOS: T-20398A-06-0346  
TO ALL PARTIES:

DOCKETED BY	
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Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

NAVIGATOR TELECOMMUNICATIONS, LLC  
(CANCELLATION OF CC&N  
GRANTED IN DECISION NO. 69884)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 22, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 28, 2009 and APRIL 29, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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AZ CORP COMMISSION  
DOCKET CONTROL

MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION  
9 OF NAVIGATOR TELECOMMUNICATIONS,  
10 LLC FOR A CERTIFICATE OF CONVENIENCE  
11 AND NECESSITY TO PROVIDE RESOLD  
12 LOCAL EXCHANGE, FACILITIES-BASED  
13 LOCAL EXCHANGE, AND ACCESS  
14 TELECOMMUNICATIONS SERVICES IN  
15 ARIZONA.

DOCKET NO. T-20398A-06-0346

DECISION NO. \_\_\_\_\_

**ORDER CANCELLING CC&N  
GRANTED IN DECISION NO. 69884**

11 Open Meeting  
12 April 28 and 29, 2009  
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 \* \* \* \* \*

16 Having considered the entire record herein and being fully advised in the premises, the  
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On August 28, 2007, the Arizona Corporation Commission ("Commission") issued  
20 Decision No. 69884, granting Navigator Telecommunications, LLC ("Navigator") a CC&N to  
21 provide competitive resold local exchange, facilities-based local exchange, and access  
22 telecommunications services in Arizona. The Decision ordered, among other things, that Navigator  
23 obtain and docket proof of a performance bond or irrevocable sight draft letter of credit in the amount  
24 of \$125,000 within 365 days of the effective date of the Decision or 30 days prior to the provision of  
25 service, whichever occurred first.

26 2. On September 3, 2008, Navigator filed (in Docket No. T-20398A-08-0463), a Request  
27 for Change in Bond Requirements and for an Extension of Time ("Request"). According to the  
28

1 Request, Navigator has not procured a performance bond or letter of credit and has not yet begun to  
2 provide local exchange and access services in Arizona. The Request also states that subsequent to the  
3 issuance of Decision No. 69884, Navigator entered into an agreement with Access Integrated  
4 Networks, Inc., dba Birch Communications ("Birch") whereby Navigator transferred, in 23 States, its  
5 existing residential and business local and long distance customer lines to Birch. The Request further  
6 states that as a result of the transaction with Birch, Navigator is restructuring its business in those  
7 states, to focus on expanding its market in the customer owned pay telephone ("COPT") area.  
8 According to Navigator, it has changed its business plans to focus on serving COPT and payphone  
9 service providers. The Request states that due to the changes in its business plans, Navigator is  
10 seeking Commission approval to reduce the amount of the performance bond or irrevocable sight  
11 draft letter of credit set forth in Decision No. 69884 because Navigator plans to only provide COPT  
12 services in Arizona.

13         3.       On December 30, 2008, Navigator filed a second letter seeking to withdraw its  
14 Request filed in Docket No. T-20398A-08-0463 and to have it filed in this docket where Decision  
15 No. 69884 was issued. The letter clarifies that Navigator is requesting cancellation of only the  
16 facilities-based local exchange portion of the CC&N granted in Decision No. 69884 and not the  
17 resold local exchange services and access telecommunications services portion of the CC&N. The  
18 letter further reiterated that no customers will be affected by cancellation of the facilities-based local  
19 exchange services because Navigator had never commenced local services in Arizona. Further,  
20 Navigator states that it currently has no plans to deploy facilities in Arizona, except on a resold basis.

21         4.       On January 30, 2009, the Commission's Utilities Division ("Staff") docketed a  
22 Memorandum<sup>1</sup> in response to Navigator's application. Staff's Memorandum states Staff spoke to  
23 counsel for Navigator, via telephone, to discuss Navigator's request for an extension of time to file its  
24 performance bond and cancellation of the facilities-based local services portion of its CC&N. Staff  
25 expressed concerns that Navigator's request for an extension of time to file its performance bond or  
26 irrevocable sight draft letter of credit did not state a specific length of time. Staff reasoned that  
27

28 <sup>1</sup> Staff docketed the same Memorandum in both the T-20398A-08-0463 and T-20398A-06-0346 dockets.

1 because the extension of time to file the performance bond or irrevocable sight draft letter of credit  
2 hinged on Commission deciding whether to grant Navigator's request to cancel a portion of its  
3 CC&N, the open ended extension of time was appropriate, contingent on the Commission resolving  
4 the CC&N cancellation issue. Staff further noted that Decision No. 69884 required Navigator to file  
5 confirming tariffs for its proposed services within 365 days of the Decision and that Navigator has  
6 failed to do so. According to counsel for Navigator, the extension of time was intended to include a  
7 request to extend time for Navigator to file its tariff. Based on Navigator's verbal request, Staff  
8 recommends that Navigator be given an extension of time to file its performance bond contingent on  
9 the Commission resolving the company's request to cancel a portion of its CC&N. Staff further  
10 recommends that Navigator be required to file its tariff by March 31, 2009, and that Navigator be  
11 granted no further extensions of time absent good cause.

12       5.       On March 9, 2009, Navigator docketed a letter in both the above-captioned docket  
13 and Docket No. T-20398A-08-0463 seeking to withdraw its request to reduce the bond amount, to  
14 extend time to file its performance bond or irrevocable sight draft letter of credit and tariffs and  
15 requesting that Docket No. T-20398A-08-0463 be closed. Navigator's letter further requests  
16 cancellation of its CC&N in its entirety. Navigator's letter states that because Navigator has never  
17 initiated local services in Arizona, no customers exist and no customers will be affected by its  
18 voluntary cancellation. Further, Navigator's letter states Commission Decision No. 68928 (August  
19 29, 2006) granted Navigator a CC&N to provide resold long distance services and that Navigator's  
20 current request is not intended to cancel or relinquish its CC&N granted in Decision No. 68928.

21       6.       On March 12, 2009, Staff docketed a second Memorandum<sup>2</sup> recommending that the  
22 Commission approve Navigator's application to withdraw its request for an extension of time, cancel  
23 the CC&N granted in Decision No. 69884, and that the notice requirements under Arizona  
24 Administrative Code R14-2-1107 be waived since Navigator has never initiated its local services in  
25 Arizona and no customers will be affected by cancellation of the CC&N.

26       7.       Staff's recommendations are reasonable and should be adopted.

27  
28 <sup>2</sup> Staff docketed the Memorandum in Docket Nos. T-20398A-06-0346 and T-20398A-08-0463.

**CONCLUSIONS OF LAW**

1  
2 1. Navigator is a public service corporation within the meaning of Article XV of the  
3 Arizona Constitution and A.R.S. §§40-281 and 40-282.

4 2. The Commission has jurisdiction over Navigator and the subject matter in this case.

5 3. Staff's recommendations to cancel the CC&N granted in Commission Decision No.  
6 69884 and to waive the notice requirements under A.A.C. R14-2-1107 are reasonable and should be  
7 adopted.

8 **ORDER**

9 IT IS THEREFORE ORDERED that Navigator Telecommunications, LLC's application to  
10 withdraw its request for an extension of time to file its performance bond or irrevocable sight draft  
11 letter of credit in the amount of \$125,000 and its associated tariffs as set forth in Commission  
12 Decision No. 69884 (August 28, 2007), is hereby granted.

13 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to  
14 Navigator Telecommunications, LLC in Commission Decision No. 69884 (August 28, 2007), to  
15 provide resold local exchange, facilities-based local exchange and access telecommunications  
16 services in Arizona, is hereby cancelled.

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IT IS FURTHER ORDERED that the notice requirements under Arizona Administrative Code R14-2-1107 are hereby waived.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: NAVIGATOR TELECOMMUNICATIONS, LLC

2 DOCKET NO. T-20398A-06-0346

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